

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

WILLIAM LEONARD, JR.,)	
)	
Plaintiff,)	
)	Case No. 3:05-CV-01015-MEF-CSC
vs.)	
)	
RELIASTAR LIFE INSURANCE)	
COMPANY f/k/a NORTHWESTERN)	
NATIONAL LIFE INSURANCE)	
COMPANY,)	
)	
Defendant.)	
_____)	

**DEFENDANT RELIASTAR LIFE INSURANCE COMPANY'S
REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION TO
RELIASTAR'S MOTION TO DISMISS THE COMPLAINT**

Defendant ReliaStar Life Insurance Company ("ReliaStar") filed its Motion to Dismiss the Complaint and to Strike Class Action Claims (D.E. 4) on December 22, 2005. Acknowledging the deficiencies in his original Complaint, on January 20, 2006, the Plaintiff *sua sponte* filed a First Amended Complaint (D.E. 9).¹ The filing of the First Amended Complaint supersedes the original Complaint² and renders ReliaStar's Motion to Dismiss moot. *See, e.g., DePaola v. Nissan North Am.*, No. Civ.A. 1:04CV267-W,

¹ Plaintiff correctly points out that he is permitted to amend his complaint once without leave of court prior to the filing of an answer. Fed. R. Civ. P. 15(a).

² *See, e.g., Kolling v. American Power Conversion Corp.*, 347 F.3d 11, 16 (1st Cir. 2003) (amended complaint completely supersedes original complaint, "and thus the original complaint no longer performs any function in the case") (citing *Lopez-Carrasquillo v. Rubianes*, 230 F.3d 409, 412 (1st Cir. 2000); 6 C. WRIGHT, A. MILLER & M. KANE, FEDERAL PRACTICE & PROCEDURE § 1476 (2d ed. 1990) ("Once an amended pleading is interposed, the original pleading no longer performs any function in the case.")).

2005 WL 2122265, at *11 (M.D. Ala. Aug. 29, 2005) (motions to dismiss filed prior to an amended complaint are moot). Accordingly, no reply to the Plaintiff's Response in Opposition to the Motion to Dismiss is required. ReliaStar reserves its right to dispute all of the various arguments made in Plaintiff's Response, which are uniformly without merit. ReliaStar will respond to the First Amended Complaint in due course pursuant to Rules 15(a), 6(e), and 5(b)(2)(D) of the Federal Rules of Civil Procedure.

/s/ S. Andrew Kelly

Attorneys for Defendant

ReliaStar Life Insurance Company

OF COUNSEL:

Michael L. Bell, Esq. (BELLM6182)

S. Andrew Kelly, Esq. (KELL3760)

LIGHTFOOT, FRANKLIN & WHITE, L.L.C.

The Clark Building

400 North 20th Street

Birmingham, Alabama 35203-3200

Telephone: (205) 581-0700

Facsimile: (205) 581-0799

Markham R. Leventhal (Fla. Bar #616140)

Stephan I. Voudris (Fla. Bar #135542)

Ben V. Seessel (Fla. Bar. #598585)

JORDEN BURT LLP

777 Brickell Avenue, Suite 500

Miami, Florida 33131-2803

Telephone: (305) 371-2600

Facsimile: (305) 372-9928

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jere L. Beasley, Esq. (libby.rayborn@beasleyallen.com)
W. Daniel Miles, III, Esq. (dee.miles@beasleyallen.com)
Joseph H. Aughtman, Esq. (jay.aughtman@beasleyallen.com)
John E. Tomlinson, Esq. (john.tomlinson@beasleyallen.com)
Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.
P. O. Box 4160
Montgomery, AL 36103-4160

/s/ S. Andrew Kelly
OF COUNSEL

145791